

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES
LITIGATION

No. CV-04-25-FVS

ORDER RE EXPECTED
TESTIMONY OF JANE
NETTESHEIM

THIS MATTER comes before the Court without oral argument based upon PricewaterhouseCoopers' motion to exclude the expected testimony of Jane Nettesheim.

BACKGROUND

Metropolitan Mortgage & Securities Co., Inc., ("Met"), and Summit Securities, Inc. ("Summit") sold securities through Metropolitan Investment Securities, Inc. ("MIS"). Met and Summit depended upon the sale of securities in order to raise the money they needed to finance their operations. During 2002 and 2003, they filed new registration statements with the Securities and Exchange Commission ("SEC"). The SEC did not declare them effective. Furthermore, the National Association of Securities Dealers ("NASD") began an investigation of MIS. The NASD's investigation of MIS culminated in a consent decree, which was entered during October of 2003. Among other things, MIS agreed to pay a fine of \$500,000 and to refrain from selling

1 securities. Thus, by the Fall of 2003, Met and Summit had no new
2 securities to sell and no mechanism for selling new securities even if
3 the SEC had declared effective the registration statements the
4 companies had filed. The companies soon ran out of cash and ceased
5 operations. The plaintiffs filed suit on January 20, 2004. Met and
6 Summit filed bankruptcy petitions the following month.

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8 The plaintiffs seek damages from PricewaterhouseCoopers LLP
9 ("PwC") under Section 11 of the Securities Act of 1933. 15 U.S.C. §
10 77k(a). If the plaintiffs prove liability, they are entitled to "the
11 difference between the amount paid for the security . . . and . . .
12 the value thereof as of the time such suit was brought[.]" 15 U.S.C.
13 § 77k(e). The plaintiffs have retained Jane Nettesheim to calculate
14 their damages. In order to do so, she must establish two values. The
15 first is the value of the plaintiffs' securities when they purchased
16 them. The second is the value of the plaintiffs' securities when they
17 filed suit. Ms. Nettesheim says she encountered an obstacle when she
18 attempted to determine the second value. She says she was unable to
19 locate reliable financial information regarding the value of the
20 plaintiffs' debt securities on January 20, 2004, *i.e.*, the day they
21 filed suit. Consequently, Ms. Nettesheim decided the value of their
22 debt securities on that date is equal to the total amount of money
23 they will receive from the bankruptcy court and from lawsuits.

24
25 (Expert Report dated June 26, 2009, at 13; Rebuttal Expert Report
26 dated September 4, 2009, at 55.) PwC argues this opinion is

1 inadmissible under Federal Rule of Evidence 702.

2 **RULING**

3 Among other things, an expert opinion must be "the product of
4 reliable principles and methods[.]" Fed.R.Evid. 702. PwC's motion to
5 exclude Ms. Nettesheim's anticipated testimony challenged the
6 plaintiffs to identify the principles or methods upon which she relied
7 in concluding the value of their debt securities on January 20, 2004,
8 is equal to the total amount of money they will receive from the
9 bankruptcy court and from lawsuits. In an effort to meet PwC's
10 challenge, the plaintiffs cited several passages in her reports of
11 June 26, 2009, and September 4, 2009. The following passage is
12 representative:
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14 Given the lack of any market in the relevant securities at
15 any time after December 2003, and the unreliability of
16 contemporaneous financial statements and reports as
17 previously described, the only non-speculative value that
18 can be ascribed to the Metropolitan Debentures and Summit
19 Investment Certificates must be the payouts actually
received from settlements and through the resolution of the
bankruptcy.

20 (Rebuttal Expert Report dated September 4, 2009, ¶ 90, at 55.) The
21 Court assumes, for purposes of argument, Ms. Nettesheim's premises are
22 valid. However, even if they are, she has not explained why the value
23 of the plaintiffs' debt securities on January 20, 2004, equals the sum
24 of the payouts they will receive. Neither her June 26th report nor
25 her September 4th report cites any literature -- academic or
26 professional -- supporting her theory of valuation. To the contrary,

1 both reports proceed on the assumption the theory is valid without
2 explaining why that's so. And perhaps it is valid; but if it is, its
3 validity is not obvious. All the Court can say, given the record as
4 it now stands, is Ms. Nettesheim has presented an ingenious theory
5 which may or may not have an adequate analytic foundation. That is
6 not enough to satisfy the requirements of Rule 702.

7 **IT IS HEREBY ORDERED:**

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9 PricewaterhouseCoopers' motion to exclude the expected testimony
10 of Jane Nettesheim (**Ct. Rec. 749**) is **granted in part**. Ms. Nettesheim
11 may not testify "the only non-speculative value that can be ascribed
12 to the Metropolitan Debentures and Summit Investment Certificates must
13 be the payouts actually received from settlements and through the
14 resolution of the bankruptcy."

15 **IT IS SO ORDERED.** The District Court Executive is hereby
16 directed to enter this order and furnish copies to counsel.

17 **DATED** this 18th day of February, 2010.

18
19 s/Fred Van Sickle
20 Fred Van Sickle
21 Senior United States District Judge
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